

Statement of PPL Montana
Before the Natural Resources Committee
Of the Montana State Senate
Regarding Senate Bill No. 420

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Mr. Chairman and members of the Committee:

My name is Holly Franz. I represent PPL Montana. As part of my water law practice, I have represented PPL Montana, and before that the Montana Power Company, in the Montana water adjudication for the last 20 years.

PPL owns 9 dams in the Missouri River drainage, Hebgen and Madison in the Madison, Holter and Hauser near Helena, and the five dams at Great Falls. PPL Montana also owns 2 dams in the Clark Fork drainage, Thompson Falls and Kerr. The FERC license for Kerr will transfer to the Salish-Kootenai Tribes in 2011. All of these dams have water rights in excess of 250 cubic feet per second.

These water rights are some of the most senior instream flow, nonconsumptive water rights in the state. Temporary preliminary decrees have already been issued for all of these rights except those at Kerr, where the adjudication is on hold during compact negotiations with the Salish-Kootenai Tribes, and those at the five Great Falls dams. As part of the accelerated adjudication under HB 22 passed in 2005, DNRC is starting to review these basins for adjudication.

PPL Montana opposes Senate Bill 420 because it's duplicative, unnecessary, and treats water rights differently based on the type of use.

In 2005, the legislature passed a bill allowing the Attorney General to intervene before the Water Court on any issue remarks that are not resolved by objection in the adjudication. As part of the adjudication, DNRC reviews the filed water right claims, including hydro claims, and places remarks on those claims if there is any question concerning historic use. The historic evidence in support of claimed hydro rights is particularly easy to review because the flows through the turbines have been and continue to be measured on a daily basis.

The DNRC remarks are usually relied on by other water users to file objections in the adjudication. Under the law in 2005, if no objections are filed to a claim that received a DNRC issue remark, the water court must review and resolve the remark before the adjudication is completed. SB 420 duplicates this process.

This bill also sets a bad precedent by establishing a different standing requirement for one particular water use. Montana has never had a preference system in its water law. The constitutionally protected prior appropriation doctrine of first in time, first in right, applies regardless of use. All rights are treated the same in the administration and adjudication of water rights. This bill sets hydro rights out for increased scrutiny for no rationale other than they are senior to other uses. What's next – are irrigation rights going to be targeted because they are the very most senior rights on most streams. Or, are instream flows going to be targeted because others want to use the water for new, consumptive uses. The same standard should be applied to all water rights.

This bill serves no purpose and is a bad idea. Please give this bill a do not pass recommendation.